

ORIGINAL

IN THE SUPREME COURT

STATE OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

LOWE'S HOME CENTERS, INC., )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 WASHINGTON COUNTY BOARD )  
 OF REVISION, WASHINGTON )  
 COUNTY AUDITOR, AND TAX )  
 COMMISSIONER OF THE STATE OF )  
 OHIO, )  
 )  
 Appellees. )  
 )

SUPREME COURT CASE  
NUMBER: ~~14-0843~~

BOARD OF TAX APPEALS CASE  
NUMBER 2011-1664

NOTICE OF APPEAL

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FILED  
 MAY 22 2014  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

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STATE OF OHIO

IN THE SUPREME COURT

STATE OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

LOWE'S HOME CENTERS, INC.,	)	SUPREME COURT CASE
	)	NUMBER: _____
Appellant,	)	
	)	
v.	)	
	)	
WASHINGTON COUNTY BOARD	)	BOARD OF TAX APPEALS CASE
OF REVISION, WASHINGTON	)	NUMBER 2011-1664
COUNTY AUDITOR, AND TAX	)	
COMMISSIONER OF THE STATE OF	)	
OHIO,	)	
	)	
Appellees.	)	
	)	

The Appellant, Lowe's Home Centers, Inc., by and through counsel, hereby gives notice of its appeal to the Supreme Court of The State of Ohio, from a Decision and Order of the Ohio Board of Tax Appeals, rendered on the 22nd of April, 2014, a copy of which is attached as "Exhibit A" and which is incorporated herein as though fully rewritten in this Notice of Appeal. The Errors complained of are attached hereto as "Exhibit B", which is incorporated herein by reference.

Respectfully submitted,



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EXHIBIT "A"

OHIO BOARD OF TAX APPEALS DECISION AND ORDER  
CASE NO. 2011-1664

# OHIO BOARD OF TAX APPEALS

Lowe's Home Centers, Inc., )  
 )  
 Appellant(s), )  
 )  
 vs. )  
 )  
 )  
 )  
 Washington County Board of Revision, et al., )  
 )  
 )  
 Appellees. )

CASE NO(S). 2011-1664

(REAL PROPERTY TAX)

DECISION AND ORDER

## APPEARANCES:

For the Appellant - The Gibbs Firm, LPA  
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For the County Appellees - James E. Schneider  
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Entered **APR 22 2014**

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

Appellant(s) appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number(s) 23-00-84565.001, 24-00-84563.001, 24-00-84566.001, 24-00-84566.004, 24-00-84566.720, and 24-00-84570.002 for tax year 2010. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of this board's hearing, and the written legal argument of the parties. The subject's total true value was initially assessed at \$9,091,000. A decrease complaint was filed with the BOR seeking a reduction in value to \$3,600,000.

At the hearing before the BOR, the appellant, through its counsel, presented an owner's opinion of value which opined a total true value of the subject of \$3,600,000 as of tax lien date. The BOR issued a decision maintaining the initially assessed valuation, which led to the filing of the present appeal.

At the hearing before this board, the appellant presented the testimony and report of state certified appraiser Patricia Costello. Costello described the subject as a Lowe's store situated in Marietta, Ohio. Costello described the data used in her income approach to value in which she ultimately arrived a total true value for the subject at \$5,295,000. Costello then went on to explain the criteria used to obtain the comparable properties in her sales comparison approach and any adjustments she made to each. Through that approach, she arrived at a total true value of \$5,700,000 for the subject. While she also performed an income approach to value, reflecting an opinion of \$5,295,000, Costello testified that because she believed that if sold, the building would be purchased by an owner user, she relied primarily on the sales comparison approach and

concluded to a final value of \$5,700,000 for the subject as of tax lien date. Counsel for the county appellees had the opportunity to cross-examine Costello. Through this line of questioning, Costello admitted that she deliberately excluded first-generation users from her analysis and that she valued the property as if Lowe's vacated the subject as of the tax lien date. The county appellees then presented the testimony and report of Karen L. Blosser, MAI. Blosser first described the subject's location. Blosser testified that although the subject is in a small town, the subject property is directly off the interstate and in a regional shopping area for a much wider region.<sup>1</sup> Blosser explained that when selecting comparable properties for her report, she considered traffic count, population, and median disposable income and then made adjustments based upon location and age as compared to the subject. Blosser concluded to a total true value for the subject at \$7,200,000 via the income approach and \$7,100,000 via the sales comparison approach. Giving primary weight to the income approach, Blosser concluded to a final value of \$7,200,000 for the subject as of January 1, 2010. Counsel for the appellant cross-examined Blosser, focusing on who assisted her in preparing the report and the accuracy of the data she utilized in arriving at her final value conclusion.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. \*\*\* However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Such is the case in this matter, as the record does not indicate that the subject property "recently" transferred through a qualifying sale.

The record before this board contains two appraisal reports, each of which provides an opinion of value as of tax lien date, prepared for tax valuation purposes, and attested to by qualified experts. Counsel for the appellant argued at this board's hearing, as well as in his written argument, that Costello's appraisal is more probative because she gave careful consideration to the fact that the subject is located in a small town in a rural county. The county appellees, on the other hand, argue that Blosser's appraisal is more probative of the subject's value because Blosser, unlike Costello, did not exclude first-generation user-occupied comparable properties nor did she exclude long-term leased built-to-suit properties. See *Meijer Stores Ltd. Partnership v. Franklin Cty. Bd. of Revision*, 122 Ohio St.3d 447, 2009-Ohio-3479; *Target Corp. v. Lake Cty. Bd. of Revision* (Dec. 20, 2011), BTA No. 2008-M-1088, unreported. We believe that by intentionally excluding first-generation users and long-term leased build-to-suit properties within her two approaches, Costello has not properly analyzed the market, potentially skewing her analysis. We find that Blosser's comparables were more appropriate given that Lowe's occupied the property as of the tax lien date, as well as

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<sup>1</sup> Blosser testified that she spoke with many real estate professionals in the area to confirm the market.

Blosser's testimony that the subject is located in a high-trafficked area which draws from a regional market. We ultimately find Blosser's testimony and report more persuasive, and while we have considered the appellant's arguments, we do not find that any of the arguments warrant a rejection of Blosser's final opinion of value.

It is therefore the order of this board that the total true and taxable values of the subject property as of January 1, 2010 were \$7,200,000 and allocated as follows:<sup>2</sup>

PARCEL NUMBER	TRUE VALUE	TAXABLE VALUE
23-00-84565.001	\$ 26,970	\$ 9,440
24-00-84563.001	\$ 134,050	\$ 46,920
24-00-84566.001	\$2,743,340	\$ 960,170
24-00-84566.004	\$ 3,170	\$ 1,110
24-00-84566.720 <sup>3</sup>	\$4,265,500	\$1,492,920
24-00-84570.002	\$ 26,970	\$ 9,440

It is the order of the Board of Tax Appeals that the subject property be assessed in conformity with this decision and order.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



A.J. Groeber, Board Secretary

<sup>2</sup> We have allocated Blosser's final opinion of value to each parcel based upon the auditor's original assessments for tax year 2010. See *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921.

<sup>3</sup> The record indicates that this parcel is subject to Tax Increment Financing ("TIF").

## EXHIBIT "B"

### ASSIGNMENT OF ERRORS

#### ASSIGNMENT OF ERROR NO. 1

The Board of Tax Appeals decision violates the Due Process clauses under Article I, Section 16 of the Ohio State Constitution and the Fourteenth Amendment of the United States Constitution by applying the definition of fee simple and interpreting §5713.03 of the Ohio Revised Code in an inconsistent and discriminatory manner among taxpayers. *Rite Aid of Ohio, Inc. vs. Washington County Board of Revision, et al.* (2014) BTA No. 2011-1760.

#### ASSIGNMENT OF ERROR NO. 2

The Board of Tax Appeals decision violates the Equal Protection clauses under Article I, Section 2 of the Ohio State Constitution and the Fourteenth Amendment of the United States Constitution by applying the definition of fee simple, and interpreting §5713.03 of the Ohio Revised Code, in a manner that discriminates against certain taxpayers. *Rite Aid of Ohio, Inc. vs. Washington County Board of Revision, et al.* (2014) BTA No. 2011-1760.

#### ASSIGNMENT OF ERROR NO. 3

The report and testimony of Blosser did not constitute probative and credible evidence of value, and therefore the Board of Tax Appeals should have performed an independent determination of value. *Dublin City Schools Board of Education v. Franklin County Board of Revision, et al.* (2014) Ohio Supreme Ct. Slip Opinion No. 2014-Ohio-1940.

#### ASSIGNMENT OF ERROR NO. 4

In accepting the value conclusion from the Blosser appraisal, the Board of Tax Appeals violated its duty to independently determine the fee simple value of the subject real property as required by §5713.03 of the Ohio Revised Code and the prior decisions of this Court.

#### ASSIGNMENT OF ERROR NO. 5

The Board of Tax Appeals decision is arbitrary and capricious.

#### ASSIGNMENT OF ERROR NO. 6

The Board of Tax Appeals decision is against the manifest weight of the evidence.

#### ASSIGNMENT OF ERROR NO. 7

The Board of Tax Appeals abused its discretion by accepting the report and testimony of Blosser as probative and credible evidence of value.

**CERTIFICATE OF SERVICE**

A copy of the foregoing *Notice of Appeal* was served this 21 day of May, 2014, by personal service upon:

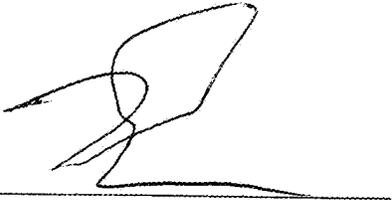
The Ohio Board of Tax Appeals  
Rhodes Tower  
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Columbus, Ohio 43215

A copy of foregoing *Notice of Appeal* was served this 22 day of May, 2014, by certified mail upon:

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